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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
09/868,643	10/05/2001	Yoichi Ozawa	210090US0PCT	4356
22850	7590 08/06/2003			
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.			EXAMINER	
1940 DUKE ALEXANDI	STREET RIA, VA 22314	PADEN, CAROLYN A		
			ART UNIT	PAPER NUMBER
			1761	17
			DATE MAILED: 08/06/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary Examiner			ink.
## Examiner		Applicati n No.	Applicant(s)
Carolyn A Paden 1761 - The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Repty A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. If the period for reply specified above is less than they (30) days, a reply within he statistory minimum of thiny (30) days will be considered times. If the period for reply specified above is less than they (30) days, a reply within he statistory minimum of thiny (30) days will be considered times. If the period for reply specified above is the statistic period will be specified and the statistic period will be application. If the period for reply specified above is the statistic period will be application. If the period for reply specified above is the statistic period will be application. A prophy received by the Office state than throw months after the making date of this communication, even if streety filed, may reduce any seminary reply date of this communication is prophy than the statistic period of the communication is streety. B Responsive to communication(s) filed on \$01.August 2003. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under \$Ex parts Queyle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) \$\frac{1.013 and 15.47}{2}\$ isfare pending in the application. 4a) Of the above claim(s) \$\frac{1.311.2 and 14}{2}\$ isfare withdrawn from consideration. 5) Claim(s) \$\frac{1.02}{2}\$ as and 39-34 isfare objected to. Claim(s) \$\frac{1.02}{2}\$ as a allowed. Claim(s) \$\frac{1.02}{2}\$ as and 39-34 isfare objected to by the Examiner. Application Papers 9) The specification is objected to by the Examiner. If approved, corrected drawings are required in rep		09/868,643	OZAWA ET AL.
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1)	 THE MAILING DATE OF THIS COMMUNICATION Extensions of time may be available under the provisions of 37 CFR 1 after SIX (6) MONTHS from the mailing date of this communication. If the period for reply specified above is less than thirty (30) days, a re If NO period for reply is specified above, the maximum statutory perior Failure to reply within the set or extended period for reply will, by stature. Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b). 	136(a). In no event, however, may a sply within the statutory minimum of the dwill expire SIX (8) MO ate, cause the application to become A	reply be timely filed irty (30) days will be considered timely. NTHS from the mailing date of this communication. NBANDONED (35 U.S.C. § 133).
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Applicant called to note that the examiner prosecuted the wrong claim in Paper 15. Accordingly the rejection of the claims set forth in this paper has been withdrawn. The restriction requirement against the claims is maintained for the reasons set forth in Paper 15.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim (5,952,230) in view of Bartesch (4,556,573) Christianson (4,495,207).

Kim discloses a mechanical method for separating soybean embryos from the rest of the soybean. The final product is stated to contain 30-70% embryos. Applicant draws equivalence between soybean germ and soybean embryo in the difference in the title utilized in paper 14 and paper 7. The claims appear to differ from the reference in the suggestion of extracting oil from soybean germ. Extraction of edible oil from seeds is a well-known expedient as shown by the wide variety of seed oils that are presently on the market. Bartesch teaches that it is well known in the art to

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extract edible oil from soybean meal. The extraction of oil from corn seed germ is also well known in the art, as shown by Christianson (4,495,207). Thus with the references before him, it would have been obvious to one having ordinary skill in the art to utilize soybean germ as a starting material to obtain an oil source.

Claims 7, 10 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim (5,952,230) in view of Bartesch (4,556,573)

Christianson (4,495,207) as applied to claims 4-6 above, and further in view of Tokue "Properties" article.

The claims appear to differ from the reference in the suggestion that the soybeans contain a particular level of sterols and also a particular level of tocopherol. Tokue shows that the content of soybean embryo lipids inherently possesses the sterol content and the tocopherol content of the claims at Tables 7 and 8.

Claims 7, 8, 13-19, 31, 32 and 34-37 are rejected under 35
U.S.C. 103(a) as being unpatentable over Kim (5,952,230) in view of
Bartesch (4,556,573) Christianson (4,495,207) as applied to claims 4-6
above, and further in view of Tokue "Properties" article as applied to claims
4-6 above, and further in view of Menshitsu ("Sterol Composition" article).

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The claims appear to differ from the reference in the indication of the campesterol content, which Menshitsu shows to be an inherent part of the composition that contains soybean embryo. Thus with the teachings of Menshitsu, one of ordinary skill in the art would expect that the soybean embryo oil would contain the campesterol content of the claims and also expect that the tocopherol content of the oil to be within the range that is set forth in the claims.

The claims also appear to differ from the reference in the suggestion of the method by which the product is made. To extract oil from soybeans by one method or the other is not alone seen to constitute unobviousness.

Also to use an edible oil in food would have been an obvious to use it for its nutritive values.

Claims 9, 10, 20-28, 33 and 39-47 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. None of the reference show a soybean oil with the particular phytosterol content that is set forth in the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone

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number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

if attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

CAROLYN PADEN 8-

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